



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**SEP 29 2005**

REPLY TO THE ATTENTION OF  
(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Tom Pickens, Owner  
Pickens's Plastics  
149 S Cucumber Street  
Jefferson, Ohio 44047

Dear Mr. Pickens:

Enclosed is a file stamped Consent Agreement and Final Order  
(CAFO) which resolves case docket number CAA-05-2005 0062 with  
Pickens's Plastics. As indicated by the filing stamp on its  
first page, we filed the CAFO with the Regional Hearing Clerk on  
**SEP 29 2005**.

Pursuant to paragraph 76 of the CAFO, Pickens's Plastics must pay  
the civil penalty within 30 days of the date the CAFO is filed.

Your check must display the case docket number, CAA-05-2005 0062,  
and the billing document number, 054305035.

Please direct any questions regarding this case to Andre  
Daugavietis, Associate Regional Counsel at 312.886.6663.

Sincerely yours,

William MacDowell  
Section Chief, AECAS (MN/OH)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No. CAA-05- 0006 -0062
	)	
Pickens Plastics	)	Proceeding to Assess a Civil
Jefferson & Ashtabula, Ohio,	)	Penalty under Section 113(d)
	)	of the Clean Air Act,
	)	42 U.S.C. § 7413(d)
Respondent.	)	
_____	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. The Respondent is Pickens Plastics, Inc., a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a Consent Agreement and Final Order (CAFO). 40  
C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO. under Section 113(d) of the Act, 42 U.S.C. § 7413(d), or otherwise.

**Statutory and Regulatory Background**

9. On June 16, 1997, U.S. EPA approved OAC rule 3745-21-07(G)(2) as part of the federally enforceable state implementation plan (SIP) for Ohio. 62 Fed. Reg. 18520.

10. OAC rule 3745-21-07(G) (2) prohibits organic compound (OC) emissions over eight pounds per hour and forty pounds per day, including photochemically reactive cleanup materials.

11. On March 10, 2003, U.S. EPA approved OAC rule 3745-31-05(A) (3) as part of the federally enforceable state implementation plan (SIP) for Ohio. 68 Fed. Reg. 2909.

12. OAC rule 3745-31-05 (A) (3) PTI 02-1349 prohibits OC emissions over 3.17 lbs/hr, 76.1 lbs/day and 13.9 tons/year, including cleanup emissions. On March 10, 2003, U.S. EPA approved OAC rule 3745-31-05(A) (3) as part of the federally enforceable state implementation plan (SIP) for Ohio. 68 Fed. Reg. 2909.

13. OAC rule 3745-31-05 (A) (3) PTI 02-1349 (2) (b) prohibits cleanup material usage over 396 gallons per year per spray booth.

14. On March 10, 2003, U.S. EPA approved OAC rule 3745-31-05(A) (3) as part of the federally enforceable state implementation plan (SIP) for Ohio. 68 Fed. Reg. 2909.

15. OAC rule 3745-31-05 (A) (3) PTI 02-1349 prohibits OC emissions over 8lbs/hour and 40 lbs/day, including cleanup materials.

16. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP and Title V violations that occurred from January 31, 1997 to March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a

total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

17. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

#### **Factual Allegations**

19. Respondent, Picken's Plastics, Inc., is a "person" as defined at Section 302 (e) of the Clean Air Act, 42 U.S.C. §7602(e).

#### **Jefferson Facility**

20. Picken's Plastics owns and operates a reinforced plastics composites production facility located at and around 149

South Cucumber Street, Jefferson, Ohio 44047 (Jefferson facility).

21. The Jefferson facility contains 7 Chop/Gelcoat Booths, each controlled by a baghouse.

22. The Jefferson facility was issued a Permit to Install on November 12, 1997 (the Jefferson PTI).

23. The Jefferson PTI, provides a clean up material limit of 396 gallons/yr for Source Numbers R001, R002, R003, R004, R005, R006 and R007.

24. The Jefferson facility was issued a Title V Permit on January 9, 2002 (the Jefferson Permit).

25. The Jefferson Permit, in "Part III, Emission Units R001, R002, R003, R004, R005, R006 and R007, A.I.1.," provides an OC limitation of 8 lbs/her and 40 lbs/day, including cleanup materials pursuant to OAC rule 3745-31-05 (A)(3) PTI 02-1349 for Chop/Gelcoat booths R001, R002, R003, R004, R005, R006, and R007 at the Jefferson facility.

26. The Jefferson Permit, in "Part III, Emission Units R001, R002, R003, R004, R005, R006 and R007, A.I.2.b.," provides a cleanup material usage limitation of 396 gals/yr pursuant to OAC rule 3745-31-05 (A)(3) PTI 02-1349.

27. U.S. EPA conducted an inspection of the Jefferson facility under the Clean Air Act on December 9, 2003.

28. U.S. EPA issued an information request under section 114 of the Clean Air Act on March 4, 2004, to Picken's Plastics requesting information regarding the Jefferson facility; and on April 27, 2004, Picken's Plastics submitted responsive information to U.S. EPA.

29. U.S. EPA issued a second information request under section 114 of the Clean Air Act on June 1, 2004, to Picken's Plastics requesting information regarding the Jefferson facility; and on July 1, 2004, Picken's Plastics submitted responsive information to U.S. EPA.

30. On September 23, 2004, U.S. EPA issued a Notice and Finding of Violation to Picken's Plastics citing violations at the Jefferson facility of the Ohio SIP regulations and Title V permit limits and requirements, 40 C.F.R. Part 70, set forth above, which occurred from January 2001 until June 2004.

31. On October 24, 2004, U.S. EPA and Picken's Plastics held a conference to discuss the violations cited in the September 23, 2004 Notice and Findings of Violation.

#### **Ashtabula Facility**

32. Picken's Plastics owns and operates a fiberglass reinforced plastics facility at 4212 Ann Avenue, Ashtabula, Ohio 44004 (Ashtabula facility).

33. The Picken's Ashtabula facility contains 4 Chop/Gelcoat Booths, and emissions from each are controlled by a baghouse.

34. The Ashtabula facility was issued a Title V Permit on February 23, 2001 (the Ashtabula Permit).

35. The Ashtabula Permit, in "Part III, Emission Unit R001, A.I.1, provides an OC emissions limitation of 8 lbs/hour and 40 lbs/day, including photochemically reactive clean-up materials for Chop/Spray booth R001, pursuant to OAC 3745-21-07(G)(2).

36. The Ashtabula Permit, in "Part III, Emission Unit R006, A.I.1," provides an OC emissions limitation of 3.17 lbs/hour and 76.1 lbs/day, including photochemically reactive clean-up materials, pursuant to OAC 3745-31-05(A)(3) PTI 02-6028.

37. U.S. EPA issued an information request under section 114 of the Clean Air Act on March 4, 2004, to Picken's Plastics requesting information regarding the Ashtabula facility, and on April 27, 2004, Picken's Plastics submitted responsive information to U.S. EPA.

38. U.S. EPA issued a second information request under section 114 of the Clean Air Act on June 1, 2004, to Picken's Plastics requesting information regarding the Ashtabula facility, and on July 1, 2004, Picken's Plastics submitted responsive information to U.S. EPA.

39. On September 23, 2004, U.S. EPA issued a Notice and Finding of Violation to Picken's Plastics citing violations at the Ashtabula facility of the Ohio SIP regulations and Title V



permit limits and requirements, 40 C.F.R. Part 70, that occurred from January 2001 until June 2004.

40. On October 24, 2004, U.S. EPA and Picken's Plastics held a conference to discuss the violations cited in the September 23, 2004 Notice and Findings of Violation.

**Count I (Jefferson Facility)**

41. Complainant incorporates paragraphs 1 through 40 of this complaint, as if set forth in this paragraph.

42. Daily records kept by Picken's Plastics regarding the Jefferson facility's Emission Units R001 through R007 for January 1, 2004 through June 30, 2004, show that these Emission Units were emitting over 40 lbs/day of OC.

43. The following table summarizes the emissions described in the previous paragraph:

<b>Emission Unit</b>	<b># of Days over 40 lbs/day</b>	<b>Highest Violating Day</b>	<b>% above Std</b>
R001	39	6/22/04 @ 63.04 lbs/day	57%
R002	111	2/01/04 @ 86.12 lbs/day	115%
R003	11	5/26/04 @ 49.97 lbs/day	32%
R004	12	1/15/04 @ 53.06 lbs/day	25%
R005	2	6/1/04 @ 43.71 lbs/day	9%
R006	15	6/16/04 @ 74.10 lbs/day	85%
R007	42	1/06/04 @ 62.03 lbs/day	55%

44. As summarized in the previous paragraph, at its Jefferson facility, U.S. EPA alleges that Picken's Plastics violated section A.I.1. of the Jefferson Permit with emissions over 40 lbs/day of OC on at least six months in 2004.

**Count II (Jefferson Facility)**

45. Complainant incorporates paragraphs 1 through 40 of this Complaint, as if set forth in this paragraph.

46. Purchase records kept by Picken's Plastics for the Jefferson facility's Emission Units R001, R002, R003, R004, R005, R006 and R007 for January 1, 2001 through December 31, 2001, show that these Emission Units were using over 396 gallons/yr of cleanup materials per emission unit.

47. The following table summarizes the usage described in the previous paragraph:

Emission Unit	2001 Cleanup Usage (gals)	
	Used	Recovered*
R001	1021	510
R002	1021	510
R003	1021	510
R004	1021	510
R005	1021	510
R006	1021	510
R007	1021	510

\*Assuming 50% recovered

**Count IV (Ashtabula Facility)**

53. Complainant incorporates paragraphs 1 through 40 of this Complaint, as if set forth in this paragraph.

54. Daily records kept by Picken's Plastics for the Ashtabula facility's Emission Unit R006 for January 1, 2004 through June 30, 2004, show that Emission Unit R006 was emitting over 3.17 lbs/hour of OC, including cleanup emissions on at least one day.

55. The following table summarizes the emissions described in the previous paragraph:

Emission Unit	# of Days over 40 lbs/day	Day of highest emission	% over Std
R006	1	6/22/04 @ 3.3	4%

56. As summarized in the previous paragraph, at its Ashtabula facility, U.S. EPA alleges that Picken's Plastics violated Section A.I.1 of the Permit with emissions over 3.17 lbs/hour of OC, including cleanup emissions, on at least one day.

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

57. In order to achieve "Pollution Prevention and Environmental Restoration and Protection," Respondent agrees to undertake the following two Supplemental Environmental Projects (SEPs) in resolution of this matter:

**Acetone Reduction Project**

**Count IV (Ashtabula Facility)**

53. Complainant incorporates paragraphs 1 through 40 of this Complaint, as if set forth in this paragraph.

54. Daily records kept by Picken's Plastics for the Ashtabula facility's Emission Unit R006 for January 1, 2004 through June 30, 2004, show that Emission Unit R006 was emitting over 3.17 lbs/hour of OC, including cleanup emissions on at least one day.

55. The following table summarizes the emissions described in the previous paragraph:

Emission Unit	# of Days over 40 lbs/day	Day of highest emission	% over Std
R006	1	6/22/04 @ 3.3	4%

56. As summarized in the previous paragraph, at its Ashtabula facility, U.S. EPA alleges that Picken's Plastics violated Section A.I.1 of the Permit with emissions over 3.17 lbs/hour of OC, including cleanup emissions, on at least one day.

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

57. In order to achieve "Pollution Prevention and Environmental Restoration and Protection," Respondent agrees to undertake the following two Supplemental Environmental Projects (SEPs) in resolution of this matter:

**Acetone Reduction Project**

A. In order to reduce the use and emissions of acetone, Respondent agrees for 2 years from the date of this CAFO to utilize "Super Blue LF Cleaner" in place of acetone as a tool cleaner at both facilities in applications where tools come in contact with catalyzed resin. Acetone has traditionally been the standard cleaning material utilized in the industry. Super Blue products are more expensive, but provide non-VOC materials to perform the same function. Respondent estimates that the costs of this project will be \$34,496 in additional annual expense, and that it will result in emission reductions of 9,130 pounds on an annual basis. This results in total estimated costs of \$68,992, and reductions of 18,260 pounds (9.13 tons) over the 2 years of the project.

#### **Lower VOC Paint Re-Formulation**

B. In order to reduce VOC emissions from its painting operations, Respondent, while re-formulating its paint for MACT requirements, will also incorporate a low-VOC paint requirement to significantly reduce VOC Emissions. Respondent estimates that the costs of this project will be \$37,174 in additional annual expense, and that it will result in emission reductions of 4,909 pounds on an annual basis. This results in total estimated costs of \$74,348, and reductions of 8,818 pounds (4.91 tons) over the 2 years of the project.

These projects are referred to collectively herein as the "SEP Projects."

58. Respondent estimates that the SEP projects will cost \$143,340 to implement, and provide total air pollutant emissions reductions of 27,078 pounds, over the 2 year life of the projects.

59. No later than sixty (60) days following the effective date of this CAFO, or such longer period as Respondent and

U.S. EPA shall agree in writing, Respondent shall enter into contractual arrangements to begin to implement the SEP Projects as set forth above.

60. Except as expressly otherwise permitted by U.S. EPA in writing, the SEP projects are to continue for 2 years from the date of their inception under this CAFO.

61. Respondent is required to and agrees to expend at least \$115,000 on the above SEP Projects. This figure is lower than the projects' cost estimates to take into account the possibility that the costs of the materials needed for the SEP Projects could decrease over the 2 year life of the projects. Respondent shall include documentation of the expenditures made in connection with the SEP Projects as part of the SEP Completion Report. If Respondents actual costs of performing the SEP Projects is less than \$115,000, Respondent will be liable for stipulated penalties under par. 82, below.

62. U.S. EPA's SEP project coordinator for this CAFO shall be:

Shilpa Patel (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
U.S. EPA  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590.

Respondent's SEP project coordinator for this CAFO shall be:

Dennis DeLaat  
Operations Manager  
Picken's Plastics

149 S. Cucumber Street  
Jefferson, OH 44047-0127

63. Within thirty (30) days after two years of each project has been implemented, Respondent shall submit a Project Completion Report which shall contain the following information on each of the SEP Projects:

- a. A description of the project as implemented;
- b. A description of any problems encountered, and the solutions thereto;
- c. Certification that the project has been fully implemented pursuant to the provisions of this CAFO; and
- d. Itemized costs of each project.
- e. Description of the environmental and public health benefits resulting from the Projects (quantify the benefits and pollution reductions).

Respondent agrees that failure to timely submit the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 82, below.

64. In the SEP Completion report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

65. Following receipt of a SEP Completion Report described in Paragraph 63, above, U.S. EPA will notify Respondent, in

writing: i) indicating any deficiencies in the SEP Completion Report itself, along with a grant of an additional thirty (30) days for Respondent to correct such deficiencies; or (ii) indicating that EPA concludes that the SEP Projects have been completed satisfactorily; or (iii) determining that the SEP Projects have not been completed satisfactorily and seeking stipulated penalties in accordance with paragraph 82, below.

66. The determination of whether the SEP Projects have been satisfactorily and timely completed shall be in the sole discretion of U.S. EPA. Such discretion shall be exercised reasonably.

67. For three years from the effective date of this CAFO, Respondent shall maintain legible copies of documentation of all records of costs incurred for the SEP Projects, and underlying research and data for any documents or reports submitted to EPA pursuant to this CAFO, and shall make such materials available to U.S. EPA upon request. Respondent agrees that U.S. EPA may inspect Respondents facilities at any time during business operations in order to confirm that the SEP Projects are being undertaken in conformity with the representations made herein.

68. If the SEP Projects are not timely completed, or if Respondent fails to comply with any other provision of the requirements for the SEP Projects, the stipulated penalty provisions of paragraph 82, below, shall apply.



69. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP projects.

70. Any public statement, oral or written, made by Respondent making reference to the SEP Projects shall include the following language:

- This project was undertaken in connection with the settlement of an enforcement action undertaken by the U.S. Environmental Protection Agency.

#### **Procedural Matters**

71. On or about September 22, 2004, EPA issued the Respondent a Finding of Violation giving notice of the alleged violations, and offering the Respondent an opportunity to confer with EPA.

72. On October 21, 2004, and subsequent dates, the Respondent conferred with EPA regarding the alleged violations and potential resolution of this matter.

#### **Civil Penalty**

73. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

74. U.S. EPA evaluated the facts and circumstances of this case with specific reference to the factors in Section 113(e) of the Act, and U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Based upon an evaluation of the violations alleged above Complainant originally proposed that the Administrator assess a civil penalty against Respondent of \$87,391.

75. In assessing an appropriate civil penalty in settlement of this matter, U.S. EPA took into account the nature and seriousness of the violations alleged above, the size of the Respondent's business and the economic impact of the penalty on Respondent's business, Respondent's cooperation, the steps Respondent has taken and has agreed to take to achieve and maintain compliance, the SEP Projects which Respondent has agreed to implement, information exchanged by the parties, the terms on which Respondent is willing to resolve this matter in this CAFO, and other relevant factors. Based on these factors, U.S. EPA has determined that it is appropriate to settle the violations alleged above on the terms set forth in this CAFO, and has determined that if Respondent complies with all of the terms of this CAFO, that the proposed penalty be reduced to \$19,000 as an

appropriate civil penalty payment in resolution of this action. This \$19,000 penalty represents 25% of the gravity component of the original proposed penalty.

76. Respondent shall pay the \$19,000 civil penalty, by cashier's or certified check, payable to the "Treasurer, United States of America" within thirty (30) days of the effective date of this CAFO.

77. Respondent shall send the cashier's or certified check to the following address:

U.S. EPA, Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

78. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Shilpa Patel (AE-17J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Andre Daugavietis (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.

Chicago, Illinois 60604-3509

79. This civil penalty is not deductible for federal tax purposes.

80. If Respondent does not pay timely the civil penalty (or stipulated penalties under this CAFO), U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

81. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **Stipulated Penalties**

82. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the

performance of the SEPs described above and/or to the extent that the actual expenditures for the SEPs do not equal or exceed \$115,000 as set forth in paragraph 61, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(a) Except as provided in subparagraph (b) below, if the SEP Projects are not completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$50,000.

(b) If the SEP Projects are not fully completed in accordance with paragraphs 57-70, above, but the Complainant determines that Respondent: a) made good faith and timely efforts to complete the SEP Projects; and b) certifies, with supporting documentation, that at least \$115,000 was expended on the SEP Projects, Respondent shall not be liable for stipulated penalty.

(c) If the SEP Projects are completed in accordance with paragraphs 57-70, above, but the Respondent spent less than \$115,000 on the projects, Respondent shall pay a stipulated penalty to the United States in the amount of \$5,000.

(d) If the SEP Projects are completed in accordance with paragraphs 57-70, above, and the Respondent spent at least \$115,000 on the projects, Respondent shall not be liable for any stipulated penalty.

(e) For failure to submit the SEP Completion Report required by paragraph 63, above, Respondent shall pay a stipulated penalty in the amount of \$50 for each day the report is late, until the report is submitted.

83. The determinations of whether the SEP Projects have been satisfactorily completed, and whether the Respondent has made a good faith, timely effort to implement the SEP Projects,

shall be in the sole discretion of EPA. Such discretion shall be exercised reasonably.

84. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. The provisions of pars. 76-81, above, shall apply to any stipulated penalties under this CAFO. Method of payment shall be in accordance with the provisions of paragraphs 76-78, above.

#### **Force Majeure**

85. If any event occurs which causes or may cause delays in the completion of the SEP Projects as required under this Agreement, Respondent shall notify Complainant in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to

request an extension of its obligation under this Agreement based on such incident.

86. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

87. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Order has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

88. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

**Final Statement**

89. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations section of this CAFO (set forth above in Paragraphs 19-56).

90. If Respondent fails to comply with any provision contained in this CAFO, Respondent acknowledges the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO.

91. The settlement effected in this CAFO is conditioned upon the accuracy of Respondent's representations to U.S. EPA, specifically including the information relating to the SEPs described above.

92. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

93. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local statutes, laws, ordinances and regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant, and it is the responsibility of Respondent to comply with such laws and regulations.



94. Respondent certifies that it is now in compliance with the requirements that formed the basis of the allegations in the Violations section of this CAFO.

95. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

96. Each party agrees to bear its own costs and attorneys' fees in this action.

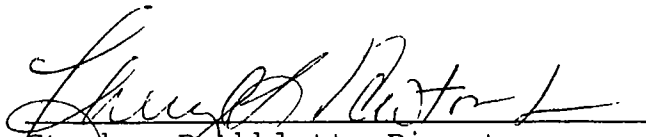
97. This CAFO constitutes the entire agreement between the parties.

98. The terms of this CAFO bind Respondent, and its successors, and assigns.

99. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

**U.S. Environmental Protection Agency, Complainant**


9/28/05  
Date


  
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

CAA-05- 2006 -0062

Pickens Plastics, Respondent

9-27-2005  
Date

  
\_\_\_\_\_  
Thomas Picken, President  
Picken's Plastics  
Jefferson, Ohio

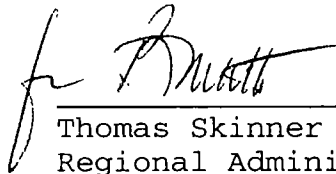
MAILED 2005-0062  


CONSENT AGREEMENT AND FINAL ORDER  
PICKEN'S PLASTICS, JEFFERSON, OHIO  
Docket No. CAA-05-2005-0062

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Final Order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9-29-15



Thomas Skinner  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

CONSENT AGREEMENT AND FINAL ORDER  
Picken's Plastics, Jefferson, Ohio  
Docket No. CAA-05- 2005 -0062 JAW

CERTIFICATE OF SERVICE

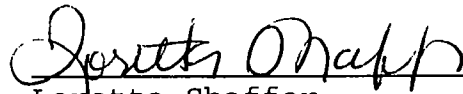
I hereby certify that I have caused the original of the foregoing Complaint and Consent Agreement and Final Order (CAFO) to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and a copy of the CAFO to be served upon the persons designated below, on the date below, by depositing a copy in the U.S. Mail, certified-return receipt requested, in an envelope addressed to:

Thomas Picken, President  
Picken's Plastics  
149 S. Cucumber Street  
Jefferson, OH 44047-0127

and by first-class mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049

on the 29<sup>th</sup> day of September, 2005.

  
Loretta Shaffer  
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 0005 9025 6558